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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,826	12/21/2000	Anthony Berno Berno	3365	8676

22886 7590 02/05/2004

AFFYMETRIX, INC  
ATTN: CHIEF IP COUNSEL, LEGAL DEPT.  
3380 CENTRAL EXPRESSWAY  
SANTA CLARA, CA 95051

EXAMINER

VEILLARD, JACQUES

ART UNIT	PAPER NUMBER
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2175

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/745,826

Applicant(s)

BERNO, ANTHONY BERNO

Examiner

Jacques Veillard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-94 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-63, and 66-94, drawn to a method and system for storing and managing probe array data, wherein the data comprising a plurality of intensity values for a plurality of probes comprising grouping the intensity values into a plurality of groups, classified in class 707, subclass 7.
  - II. Claims 64-65, drawn to data structure comprising a first table comprising a first field containing a first and second field containing or referring to a binary object, classified in class 707, subclass 100.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as it is usable in a method and system for storing and managing probe array data, wherein the data comprising a plurality of intensity values for a plurality of probes comprising grouping the intensity values into a plurality of groups, classified in class 707, subclass 7. Without requiring data structure comprising a first table comprising a first field containing a first and second field containing or referring to a binary object of group II, classified in class classified in class 707, subclass 100.

See MPEP § 806.05(d).
3. Because these inventions are distinct for the reasons given above and because the search required for each group is different and not co-extensive for examination purpose, these groups

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would require different searches in PTO's classification class and subclass. The group I search (1-63, and 66-94) would require use of search classified in Class 707, subclass 7, which would not required for Group II. The group II search (64-65) would require use of search classified in Class 707, subclass 100, which would not required for Group I, therefore restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of the of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

6. **Any response to this action should mailed to :**

Commissioner of Patent and Trademarks

Washington, D.C. 20231

**Or faxed to:**

(703) 305-9051 (for formal of draft communication intended for entry)

**Or:**

(703) 308-5357 (for informal of draft communications, please label


"PROPOSED" or "DRAFT")

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Hand- delivered responses should be brought to Crystal Park II, 2021 Crystal Drive, Arlington VA, Sixth floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques Veillard whose telephone number is (703) 305-7094. The examiner can normally be reached on Monday-Friday from 8:30 AM to about 4:00 PM., and on alternate Fridays.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Dov Popovici, can be reached at (703) 305-3830. The fax phone number for this group is (703) 308-5403.

  
CHARLES RONES  
PRIMARY EXAMINER

*J.V.*

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Jacques Veillard  
Patent Examiner TC 2100

February 2, 2004